

SENATE FINANCE COMMITTEE

April 12, 2021

9:04 a.m.

9:04:14 AM

CALL TO ORDER

Co-Chair Bishop called the Senate Finance Committee meeting to order at 9:04 a.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Lyman Hoffman
Senator Donny Olson
Senator Natasha von Imhof
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Erin Shine, Staff, Senator Click Bishop; Neil Steininger, Director, Office of Management and Budget, Office of the Governor.

PRESENT VIA TELECONFERENCE

Megan Wallace, Director, Legislative Legal Services, Alaska State Legislature; Adam Crum, Commissioner, Department of Health and Social Services.

SUMMARY

CSHB 76(FIN) am
EXTENDING COVID 19 DISASTER EMERGENCY

CSHB 76(FIN) am was HEARD and HELD in committee for further consideration.

#hb76

CS FOR HOUSE BILL NO. 76(FIN) am

"An Act extending the January 15, 2021, governor's declaration of a public health disaster emergency in response to the novel coronavirus disease (COVID-19) pandemic; approving and ratifying declarations of a public health disaster emergency; providing for a financing plan; making temporary changes to state law in response to the COVID- 19 outbreak in the following areas: occupational and professional licensing, practice, and billing; telehealth; fingerprinting requirements for health care providers; charitable gaming and online ticket sales; access to federal stabilization funds; wills; unfair or deceptive trade practices; meetings of shareholders; and school operating funds; relating to informed consent for COVID-19 vaccines; relating to personal objections to the administration of COVID-19 vaccines; providing immunity from liability and disciplinary action for occupational licensees for exposure of clients to COVID-19; providing immunity from liability for persons engaging in business and their employees for exposure of customers to COVID-19; and providing for an effective date."

[9:04:47 AM](#)

Co-Chair Bishop noted that it was the third hearing of HB 76. He intended to hear an introduction of a Committee Substitute 9cs0 and then set the bill aside.

Senator Hoffman MOVED to ADOPT proposed committee substitute for HB 76, Work Draft 32-GH1011\E (Dunmire, 4/9/21).

Co-Chair Bishop OBJECTED for discussion.

[9:05:40 AM](#)

ERIN SHINE, STAFF, SENATOR CLICK BISHOP, discussed the CS for CSHB 76 (FIN) am. She noted that the CS extended the January 15 disaster declaration to December 31, 2021; and that there were no mandates besides the requirement to submit a monthly report on the financing plan. She summarized that the CS would provide the governor and the administration tools to use in response to COVID-19. The CS allowed for vaccine distribution, expedited procurement, would reinstate telehealth flexibility, and the ability to

receive the emergency allotment for Supplemental Nutritional Assistance Program (SNAP) benefits and Federal Emergency Management Agency (FEMA) funds for congregate shelters. She noted that there were title changes on page 1 of the bill that were reflected later in the bill.

Ms. Shine spoke to a Sectional Analysis document (copy on file):

Section 1 Findings Establishes legislative findings pertaining to COVID-19. The Legislature finds that it is in the best interest of the state to take appropriate steps to continue to contain the spread of COVID-19; to distribute COVID-19 vaccines statewide; and to take appropriate steps to limit further harm to the state's economy, enable displaced workers in the state to return to work, and to allow students to rejoin in-person classes.

Ms. Shine wanted to present Section 2, Section 3, and Section 4 together in order to create a clear picture of what the CS was trying to accomplish:

Section 2 Public Health Disaster Emergency; Approval, Ratification, and Extension of Disaster Emergency Approves and ratifies the declarations of a public health disaster emergency issued on November 15, 2020, December 15, 2020, and January 15, 2021.

Extends the Public Health Disaster Emergency issued on January 15, 2021 to December 31, 2021.

Provides that the Commissioner of the Department of Health & Social Services (DHSS) may certify to the Governor that there is no longer a present outbreak of COVID-19, or a credible threat of an imminent outbreak. Upon receiving this certification, the Governor shall submit a proclamation to the Legislature that indicates that the public health disaster emergency no longer exists.

Ms. Shine noted that there were multiple statutory means of ending the disaster declaration early.

[9:08:54 AM](#)

Ms. Shine continued to address the Sectional Analysis:

Section 3 Emergency Powers of The Governor
Restricts the governor from acting in response to
COVID-10 public health disaster emergency by removing
access to:

- 26.23.020(g)(4): commandeer or utilize any private property;
- 26.23.020(g)(5): direct and compel the relocation of all or part of the population from any stricken or threatened area;
- 26.23.020(g)(6): prescribe routes, modes of transportation and destinations in connection with necessary relocation;
- 26.23.020(g)(8): suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, or combustibles; and
- 26.23.020(g)(11): use money from the oil and hazardous substance release response account to respond to the disaster related to an oil or hazardous substance discharge.

Ms. Shine explained that the actions from the governor's access listed in Section 3 were not need or utilized in response to COVID-19. She continued to address the Sectional Analysis:

Section 4 Emergency Powers of the Commissioner of Health and Social Services

Provides declaration powers to the Commissioner or Health and Social Services for a public health emergency to respond to the ongoing COVID-19 pandemic to support emergency allotments for Supplemental Nutritional Assistance Program, CMS blanket waivers, and 1915(c) Appendix K waivers.

Ms. Shine noted that Section 4 was a new section that proposed a new concept. She reminded that Alaska was eventually going to lose \$8 million in emergency allotment SNAP benefits. The Family First Coronavirus Response Act required a state emergency or disaster declaration to qualify for the emergency allotment SNAP benefits. The language had been provided by the Department of Health and Social Services (DHSS) and mirrored the language adopted by the state of Michigan.

[9:12:58 AM](#)

Senator Wilson noted that the previous declaration had a provision whereby the DHSS commissioner could help allocate a scarce resource such as a vaccine. He asked if the proposed language would give the same powers.

Ms. Shine stated that the proposed CS did not provide the powers to the DHSS commissioner. She detailed that in the disaster statutes (AS 26.23.020) there was power for the governor to access scarce resources and waive the procurement code.

Senator Olson asked if the governor was aware of Section 3 and if he was in support of the language.

Ms. Shine believed the governor was aware of the section and wanted the department to respond to the question.

[9:14:46 AM](#)

Ms. Shine addressed sections through an Explanation of Changes document (copy on file):

Section 5: Public Health Disaster Emergency; Financing Plan (Page 5, line 14 - Page 6, line 19)
Removes previous subsection (a)(8)

Ms. Shine indicated that the removal of language in Section 5 would be clearer as addressed in a later section, which she would address later in her presentation. She continued to address the Explanation of Changes:

Section 6: Reports
(Page 6, line 20-31)
Changes date on page 6, line 22 from March 1 to May 1
Changes date on page 6, line 29-30 from November 30, 2021 to January 31, 2022

Section 7: Professional and Occupational Licensing
(Page 7, line 1 - Page 8, line 6)
Changes date on page 7, line 14 from September 30 to December 31

Section 8: Telemedicine and Telehealth
(Page 8, line 7 - Page 9, line 8)
On page 9, lines 7-8, includes behavioral health care service providers to the definition of health care provider.

Ms. Shine specified that the proposed change to Section 8 was to create parity for behavioral health providers utilizing tele-medicine or tele-health in the state. She relayed that Section 9 and Section 10, relating to charitable gaming and school operating funds, had no changes from the previous version of the bill. She continued to address the Explanation of Changes:

New Section Added

Section 11: Workers' Compensation Presumption of Compensability (Page 10, line 12 - Page 11, line 6)
Provides that individuals employed as firefighters, emergency medical technicians, paramedics, peace officers, or health care providers, who contract COVID-19, are presumed to have contracted an occupational disease arising out of and in the course of employment during the public health disaster emergency declaration and are eligible for workers' compensation benefits.

New Section Added

Section 12: Program Execution
(Page 11, lines 7-22)

Restricts the governor from increasing appropriations based on receipt of federal receipts through the revised program legislation (RPL) process for the Coronavirus Response and Relief Supplemental Appropriations Act, the American Rescue Plan Act, or the funds appropriated by the 117th Congress for infrastructure, jobs, as part of the American Jobs Plan, related to COVID-19 or economic recovery.

Provides clarification that this section does not apply to appropriations and expenditures ratified under HB 313 (ch. 32, SLA 2020), or to appropriations increased in compliance with AS37.07.080(h) before the retroactive February 14, 2021 effective date.

Ms. Shine specified that Section 12 was tied to the change in the financing plan and the two sections went together.

[9:18:47 AM](#)

Ms. Shine continued addressed sections via the Explanation of Changes document:

New Section Added

Section 13: Civil Liability

(Page 11, lines 23-31)

Provides civil and criminal liability for a state agency, or an employee or agent of the state acting in an official capacity for the state for acts performed in good faith based on the authority in this Act. This section does not grant immunity for acts or omissions that constitute gross negligence, reckless misconduct, or intentional misconduct.

Section 14: Licensee Liability for Client Exposure To COVID-19

(Page 12, lines 1-21)

Changes section from codified to uncodified law and is repealed June 30, 2023.

Provides clarity for what constitutes "gross negligence" with respect to licensee actions to protect clients from COVID-19. Substantial compliance with applicable health mandates proves a licensee is not negligent. If there are no mandates that apply to the licensee, substantial compliance with mandates from another municipality or federal guidelines would serve as proof that a licensee was not negligent.

Section 15: Business and Employee Liability for Customer Exposure to COVID-19

(Page 12, line 22 - Page 13, line 17)

Changes section from codified to uncodified law and is repealed June 30, 2023.

Provides clarity for what constitutes "gross negligence" with respect to a business's actions to protect customers from COVID-19. Substantial compliance with applicable health mandates proves a business is not negligent. If there are no mandates that apply to the business, substantial compliance with mandates from another municipality or federal guidelines would serve as proof that a business was not negligent. Defines "business" for this section using a definition that currently exists in statute.

Ms. Shine noted that Section 14 and Section 15 went together and were previously codified law. The CS had a sunset date for each of the two sections, and the bill revisor had suggested the sections become uncodified law. The new language was added in both sections and focused on clarifying what was considered "gross negligence" for a licensee, business, and employee. She noted that Section 16

was unchanged from the previous version of the bill. She continued to address the Explanation of Changes:

Section 17: Repeals sections of SB 241

(Page 13, line 22-26)

Changes date on page 13, line 23 from September 30 to December 31

Ms. Shine explained that Section 18 was a conforming change to other Section numbers as changed in the CS. She addressed further changes proposed in the CS via the Explanation of Changes:

Section 19: Repeal Section

(Page 13, line 31 - Page 14, line 5)

Adds Sections 3 (Emergency Powers of the Governor), and 13 (Civil Liability Immunity) to the repeal date of December 31, 2021.

Adds Sections 4 (Emergency Powers of the Commissioner of the Department of Health and Social Services), 14 (Licensee Liability for Client Exposure to COVID-19), and 15 (Business and Employee Liability for Customer Exposure to COVID-19) to the repeal date of June 30, 2023.

Section 20: Retroactivity

(Page 14, lines 6-10)

Added Section 11 (Workers' Compensation Presumption of Compensability) to retroactive date of November 15, 2020.

Ms. Shine noted that Section 21 provided an immediate effective date and had no change. She addressed bill sections that had been removed:

Sections Removed

- Fingerprinting
- Meetings of Shareholders
- Informed Consent for COVID-19 Vaccines
- Personal Objection to the Administration of Vaccines
- CARES, CRSSA, ARPA Funds cannot be used for abortions.

All other changes are technical or conforming.

Ms. Shine highlighted that Section 15 relating to abortions was already a provision in federal law, which barred the

use of federal funds to pay for abortion. The federal funds that would be provided to Alaska to respond to COVID-19 had stringent guidelines and she did not believe the funds could be used for abortion.

[9:23:28 AM](#)

Senator Wilson had a list of questions.

Co-Chair Bishop asked him to proceed but cautioned he might call on other members.

Senator Wilson asked about abortion funding. He understood that new American Recovery and Reinvestment Act (ARRA) funds would allow for program operation items that could include abortion funding, which he thought was not prohibited in the guidance for the funds.

Ms. Shine noted that the state had not yet received guidance for ARRA funds coming into the state, and she believed the appropriation would come under the purview of the legislature. She referenced the Hyde Amendment, which prohibited the use of federal funds for abortion.

Senator Wilson referenced abortion funding and understood that the new American Recovery and Reinvestment Act (ARRA) funding did not specifically prohibit the funding of abortions. He asked for clarification.

Ms. Shine explained that the state had not seen guidance on use of federal ARRA and American Rescue Plan Act (ARPA) funds yet. She thought the appropriation of the funds would be under the purview of the legislature. She referenced the Hyde Amendment, which prohibited the use of federal funds for abortion. If the federal guidelines did not prohibit the use of the funds as such, it would be under the purview of the legislature to restrict the use of the funds.

Senator Wilson discussed removal of the Revised Program Legislation (RPL) Process as listed in Section 12. He understood that some federal funds came to DHSS on a monthly basis, such as Centers for Disease Control funds and others. He asked if the legislature would have to appropriate the funds each time they were received.

Ms. Shine stated that the funds for appropriation would be an increased federal funding level. She thought the

director of the Office of Management and Budget could address the matter.

Co-Chair Bishop asked if Senator Wilson wanted the director to address the federal funds.

Senator Wilson answered in the affirmative.

9:26:02 AM

NEIL STEININGER, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, understood that the language in Section 12 of the CS intended to limit the use of the appropriation in HB 205 (granting access to the RPL process) through the program execution statute. He echoed Ms. Shine's remarks that indicated that the funds in question were items increasing from an existing appropriation. Federal appropriations that currently existed at DHSS would not be further restricted, and the funds would be considered increases to federal receipts. He clarified that the section represented a reduction in the appropriation made in HB 205 that allowed access to any federal funds through the program execution statute.

Senator Wilson asked if the state expected to get an expansion of the federal funds. He asked Mr. Steininger which programs would be increased, and what happened after the initial funding.

Mr. Steininger stated there were multiple programs within DHSS that would receive additional funding through ARPA, that would require additional appropriations, either through an appropriation bill or through the revised program process if the legislature did not make appropriation actions. There were other smaller grants to other agencies that may not be known. He noted that the previous summer there had been several grants not initially known when the CARES Act was released, and the funds had to be accommodated through the RPL process. He used the example of grants through the Community Development Block Grant Program, grants through the National Endowment for the Arts, and grants to housing relief programs; which had needed flexibility to expeditiously deploy the funds in the state.

Senator Wilson was concerned about Section 12, and he understood the legislature had been concerned about the

governor doing monthly renewals of the declaration. He was concerned the governor would have to call a monthly special session to allocate funds that could come on a monthly basis.

9:29:11 AM

Co-Chair Stedman gave some background on the issue. He thought the legislature was faced with the issue of having over \$1 billion coming to the state between June and January. He knew that the federal government was talking about significant financial support for the country, but the specifics were not known. He emphasized that the legislature was the appropriating body, and if there were not enough members that were willing to come to Juneau and deal with appropriations, the funds would go through the RPL process, through which the funds could be automatically received by the governor while excluding the legislature from the appropriation process. There was concern that there was a significant number of legislators that did not want to come to the capitol for a special session. He referenced the previous summer and fall.

Co-Chair Stedman continued his remarks. He thought to alleviate the concern of the legislature not being convened by special session, there needed to be restrictions on the RPL process to ensure that if the legislature would not come back into session to deal with \$1 billion or more in funds it would put the state in a position to encourage the governor to call a special session. He emphasized the significance of the issue and affirmed that the proposal was not to hinder the Legislative Budget and Audit Committee. He thought the committee could work with the Legislative Legal Services to refine the language and minimize the issue mentioned by Senator Wilson relating to needing monthly appropriation.

Co-Chair Stedman emphasized that there were members that would not be present to appropriate funds, and he thought the matter was reflected in the actions of the previous 12 months. He emphasized the necessity to address the issue and ensure the appropriating body had the ability to have public discussion and do the duty of allocating the federal funds. He thought there should be ample encouragement for the executive branch to call the legislature into special session to deal with billions of dollars that would be on the table.

[9:33:36 AM](#)

Senator Hoffman also had concerns about Section 12 and understood Co-Chair Stedman concerns on the issue. He referenced the Senate's passage of a provision to allow for virtual meetings, which would alleviate many of his concerns. The provision had not been passed by the House. He thought the huge amount of funds might require the legislature to treat the funds differently. He would feel much more comfortable with Section 12 if the other body passed a bill allowing for virtual meetings during the pandemic. He understood that people had lives outside of the legislative session of 121 days, and knew people made plans accordingly. He echoed Co-Chair Stedman's sentiment that it was difficult to get the necessary votes to convene a special session to address items. He thought the section needed deliberation by the committee and should be treated accordingly.

[9:35:59 AM](#)

Co-Chair Stedman clarified that as the legislature went through the LBA process with the RPL, the decisions must be accepted without an ability to make changes. He was concerned that the RPL process would take the legislature out of decision-making regarding the funds. He thought that Senator Hoffman had made a good point in that the committee should deliberate on the matter and perhaps refine the language.

Co-Chair Bishop added that the previous spring there had been a legal challenge after completion of the LBA process and the legislature had to return to Juneau affirm the action taken.

Senator Wilson was concerned with Section 11, regarding workers compensation. He was worried that the provision was not all-inclusive and questioned whether the language was needed. He thought the language left out front-line workers and some correctional officers. He mentioned a COVID-19 outbreak amongst correctional officers in his district. He thought the language was restrictive, as it gave some individuals a higher level of protection that should be available for everyone.

Co-Chair Stedman thought there was a person online from the Legislative Legal division and wondered if it would be appropriate to hear testimony regarding Section 12.

9:39:30 AM

MEGAN WALLACE, DIRECTOR, LEGISLATIVE LEGAL SERVICES, ALASKA STATE LEGISLATURE (via teleconference), commented that the current language in Section 12 of the CS would restrict the governor from utilizing the RPL process based on the additional federal receipts enumerated in the section. She noted that there were additional federal receipts that came from the federal government that did not relate to the American Jobs Plan, COVID-19, or economic recovery. The language was not intended to restrict all RPLs during the interim, but rather just those that were for federal receipts listed in the section.

Ms. Wallace referenced an earlier question from Senator Wilson regarding the powers of the DHSS commissioner. She clarified that the bill extended the disaster, so the state would be back under a disaster emergency under AS 26.23.020. When the state was under a disaster emergency DHSS had certain powers under AS 18.15.390, which allowed for the commissioner to restrict, regulate, and ration things like medicines. The commissioner would retain some powers under the bill that were not directly related to the powers of the governor under AS 26.23.020 (g) which were specifically enumerated in the bill. TO the extent that there was any desire to limit the powers of the commissioner under Title 18, she thought the committee might want to look at the powers to consider if it was consistent with the committee's intent.

9:43:00 AM

Senator Wielechowski asked if there had been a legal challenge to the RPL process, questioning whether or not it was constitutional.

Ms. Wallace answered "yes." When the RPL statutes were initially enacted by the legislature, the statutes were challenged in court and struck down with a holding that the legislature had delegated too much power to a singular committee (LBA) to authorize and approve appropriations above and beyond what the full body had provided for. After the litigation the state ended up with the current

statutory language in AS 37.07.080 (h). There was also a legal challenge to the RPL process being able to accept and expend the CARES Act funds. When the legislature came back into session and ratified the actions of the governor and the LBA committee with respect to the CARES Act RPLs, the litigation ended.

Senator Wielechowski questioned whether the existing RPL process was constitutional. He asked whether there had been court decision on the matter.

Ms. Wallace answered in the negative. The current RPL process had not come before the court.

Senator Wilson wondered if the DHSS commissioner was available to comment on Section 2 through Section 5 and the retroactivity and repeal sections, to make sure the CS met the needs of the department.

[9:45:31 AM](#)

ADAM CRUM, COMMISSIONER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), considered Section 3, relating to emergency powers. He asserted that the department was in a vastly different position than it had been one year previously. He asserted that the department had used tools necessary to set up a widespread response included testing and vaccination. He did not think the facts and science related to COVID-19 supported the disaster declaration. He looked at Section 4, and the emergency powers of the commissioner, and thought the section had similar language to that in the state of Michigan. He thought other states had various tiers of response in order to have targeted responses to the health emergency.

Commissioner Crum continued his remarks. He thought Section 4 was a good step in updating public health laws. He thought it would be helpful to amend the section to support the allocation and distribution of vaccines and therapeutics, as well as allow for use of emergency procurement procedures to support the state's response. He also thought the section should be amended to allow the commissioner to end the public health emergency, or for the emergency to end when the federal public health emergency expired.

9:48:10 AM

AT EASE

9:49:55 AM

RECONVENED

Co-Chair Bishop WITHDREW his OBJECTION. There being NO further OBJECTION, it was so ordered. The CS for CSHB 76(FIN) was ADOPTED.

CSHB 76(FIN) am was HEARD and HELD in committee for further consideration.

Co-Chair Bishop relayed that proposed amendments were due by 5 o'clock p.m. The afternoon meeting was cancelled.

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ADJOURNMENT

9:50:25 AM

The meeting was adjourned at 9:50 a.m.